

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: MB Docket No. 03-15

Dear Ms. Dortch:

On behalf of Michiana Telecasting Corp., licensee of WNDU-DT, South Bend, Indiana (Facility ID No. 41674), this is to request a waiver of the FCC's July 1, 2005 interference protection deadline. Michiana believes that its replication/maximization interference protection deadline is automatically extended to November 3, 2007, because, as noted in the Commission's Public Notice dated June 15, 2005 (DA 05-1636), WNDU-DT's construction permit does not expire until November 3, 2007. Nevertheless, in the event that Michiana's reading of the Public Notice is in error, as a precaution, a request for waiver of the interference protection deadline is offered and is based upon circumstances beyond the licensee's control. In support of the waiver request, the following information is offered.

Michiana's original DTV allotment as specified in Table 1 of Appendix A of the 6th Report and Order in MM Docket No. 87-268 was for Channel 42 with an effective radiated power (ERP) of 374.1 kW and an antenna HAAT of 326 meters. The WNDU-DT original construction permit specified an ERP of 310 kW and an antenna HAAT of 178 meters atop the WNDU-TV auxiliary transmitter site located adjacent to the WNDU-TV transmitter site (BPCDT-971001KE). WNDU-DT launched operations in late 1998 as an early on-air digital operator. In April 2000, Michiana sought a construction permit in order to maximize its DTV operations, but this application was found to be mutually exclusive with the DTV application of WQRF in Rockford, IL. In order to resolve the mutual exclusivity, the WNDU-DT construction permit was subsequently modified to request an ERP of 695 kW and an antenna HAAT of 299 meters and to change the transmitter site to WNDU-TV's nearby main antenna tower (BPCDT-20000427AAD).

A further review of the status of WNDU-DT in light of the forthcoming sunset of analog station WNDU-TV and the need to expend substantial amounts of money to relocate the DTV antenna that would become unnecessary post analog sunset, led Michiana to reconsider the technical requirements for its DTV operation. At the end of calendar year 2004, Michiana determined that it would be infeasible to build the facilities it certified in FCC Form 381 in November 2004. It was determined that a reduction in ERP to 560 kW and a reduction in antenna HAAT to 282 meters would closely

approximate the certified maximized facilities.

The NTSC Replication Population for WNDU-TV from Table II of the FCC's December 21, 2004 Public Notice was 1,397,136 persons which would have been used if service replication was certified.

The authorized WNDU-DT Population from Table I of that Public Notice was 1,623,737 persons based upon the construction permit BPCDT-20000427AAD specifying an ERP of 695 kW and an antenna HAAT of 299 meters, non-directional. This was the certified "maximized" service population for WNDU-DT. The licensed (BLCDT-19991230AAH) WNDU-DT population (ERP of 310 kW and HAAT of 178 meters) equals 1,143,166 persons, or 70.4% of the maximization figure and 81.8% of the replication figure. The newly filed CP modification application (File No. 20050622AAE) proposing an ERP of 560 kW and an antenna HAAT of 282 meters would result in Grade B service to 1,470,454 persons, or 90.6% of the maximization figure and 105% of the replication figure.

By letter dated February 24, 2005, Michiana filed an FAA Form 7460-1 notifying the FAA of its intent to apply to the FCC for authority to increase the height of the WNDU-TV auxiliary tower and remount the WNDU-DT antenna atop the tower at this greater height. The antenna site is the licensed WNDU-DT site with NAD 27 coordinates of 41-36-19 N, 86-12-45 W. On March 15, 2005, the FAA acknowledged receipt of the application and assigned the Aeronautical Study No. 2005-AGL-1147-OE.

On May 4, 2005, the FAA issued an initial determination that the proposed structure "would exceed the obstruction standards and/or would have an adverse physical or electromagnetic interference effect upon navigable airspace or air navigation facilities" and advised Michiana that an additional study period of 90 to 120 days would be required. On May 9, 2005, Michiana's consulting engineer, Jeff Reynolds of du Treil, Lundin & Rackley, Inc., responded to the FAA initial determination and on May 17, 2005, the FAA released a Public Notice calling for comments on Michiana's proposal by June 23, 2005.

It is submitted that the forgoing constitutes circumstances which are beyond the control of Michiana. Absent a "no hazard" determination by the FAA, Michiana is constrained from making further progress in its quest for modification of its DTV facilities, despite the fact that Michiana has purchased the necessary tower and transmission line which are stored at the site awaiting FCC and FAA approvals. Michiana has made a good-faith effort to maximize and construct its DTV facilities in compliance with the FCC's deadline. Michiana had anticipated prompt action and approval of its February request to the FAA to increase the height of its DTV tower from 578 feet (176 meters) to 878 feet (268 meters) because the DTV tower, even at its increased height, is dwarfed by the immediately adjacent 1,076-foot (328 meter) WNDU-TV tower.

On June 22, 2005, an application for FCC consent to the modification of the WNDU-DT construction

permit was filed with the Commission (File No. 20050622AAE). This application includes a reconfiguration of the two identical transmitters that Michiana purchased in 1998 for its analog and digital channels. Upon their installation, one-half of the digital transmitter was "loaned" to the analog transmitter to create an ERP of 5,000 kW, and now with this DTV upgrade the transmitter will be restored and the digital TPO will be doubled to produce an ERP of 560 kW (and analog will revert to its former 3,800 kW ERP upon FCC approval of a yet-to-be-filed application for modification of the licensed facilities of WNDU-TV).

Unless the November 3, 2007 construction permit expiration date renders this request for waiver moot, it is respectfully submitted that the Commission waive the DTV construction deadline for full construction of authorized facilities for WNDU-DT for an initial period of six months allowing the FAA sufficient time in which to process Michiana's request and to issue a determination of no hazard, and thereafter, upon a grant by the FCC of the pending application for modification of the WNDU-DT construction permit, to complete construction of the new DTV facilities and to apply for a license to cover the modified construction permit.

Should there be any questions concerning this matter, kindly communicate with the undersigned.

Respectfully submitted,

Christopher J. Reynolds

Dated: June 28, 2005